

No. S.E./P.W.D./B.&R /Chandigarh/223/R.—Whereas the Governor of Haryana is satisfied that land specified below is needed by the Government, at public expense, for the public purpose, namely, for construction of link Road from km. 3/4 of Chhachhrauli Kot to Gurdwara Angitha Baba Tara Singh in tehsil Jagadhri, district Ambala, it is hereby declared that the land described in the specification below is required for the aforesaid purpose.

This declaration is made under the provisions of section VI of the Land Acquisition Act, 1894, to all whom it may concern and under the provision of section 7 of the said Act, the Land Acquisition Collector, Haryana P. D., B. and R. Branch, Ambala Cantt., is hereby directed to take order for the acquisition of said land.

Plans of the land may be inspected in the offices of the Land Acquisition Collector, Haryana P.W.D., B. & R., Branch, Ambala Cantt. and Executive Engineer.

SPECIFICATIONS

| District | Tehsil | Locality/ Village | Hadbast No. | Area in acres | Khasra No. |
|----------|----------|----------------------|----------------|---------------------|--------------------------------|
| Ambala | Jagadhri | Ashabpura | 212 | 0.33 | 1 |
| | | | | | 19, 18, 20, 21, 22, 23/1, 23/2 |
| Do | Do | Saleempur Khadar | 214 | 0.95 | 20 |
| | | | | | 6, 7, 8, 9/2, 10, 11, 12 |
| | | | | | 20 |
| | | | | | 13/1, 14, 15 |
| | | | | | 21 |
| | | | | | 11, 12, 33, 42 |
| Total | | | | 1.28 | |

No. SE/PWD/B & R/Chandigarh/224/R.—Whereas the Governor of Haryana is satisfied that land specified below is needed by the Government, at public expense, for the public purpose, namely, for construction of link road from Ambala-Jagadhri road to Haripur Jattan in tehsil Jagadhri, district Ambala, it is hereby declared that the land described in the specification below is required for the aforesaid purpose.

This declaration is made under the provisions of section VI of the Land Acquisition Act, 1894, to all whom it may concern and under the provision of section 7 of the said Act, the Land Acquisition Collector, Haryana P.W.D., B. & R. Branch, Ambala Cantt, is hereby directed to take order for the acquisition of said land.

Plans of the land may be inspected in the offices of the Land Acquisition Collector, Haryana P.W.D., B. & R. Branch, Ambala Cantt. and Executive Engineer.

SPECIFICATIONS

| District | Tehsil | Locality/ Village | Hadbst No. | Area in acres | Khasra Nos. |
|----------|----------|----------------------|---------------|------------------|--|
| Ambala | Jagadhri | Khera | 423 | 2.44 | 11, 12, 1467/36/1, 1468/36/2, 1469/37/1, 1470/37/2, 1471/37/3, 55, 56/2, 76, 77, 92, 102, to 105, 91, 115, 116, 136, 157, 158, 159, 162, 163, 196, 197, 198, 1488/137/1, 1489/137/2 |

| District | Tehsil | Village | Hadbast No. | Area in Acres | Khasra No. |
|----------|----------|----------------|-------------|---------------|--|
| Ambala | Jagadhri | Haripur Jattan | 379 | 1.48 | 17 24/1, 24/2, 24/3, 24/4, 25/1 26 4/1, 4/2, 7, 8/1, 8/2, 12/2, 12/1, 13/1, 13/2, 19/1, 19/2, 21/1, 21/2, 22, 26, 27. 29/1, 46, 118 to 120, 42 |
| Total | | | | 3.92 | |

(Sd.)

Superintending Engineer,
Chandigarh Circle, Haryana P.W.D., B & R Branch,
Chandigarh.

LABOUR DEPARTMENT

The 29th December, 1981

No. 9(1)81-6 Lab/14213.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Goodyear India Ltd., Ballabgarh.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 193 of 1977

between

SHRI CHIMAN RAM, WORKMAN AND THE MANAGEMENT OF M/S GOODYEAR
INDIA LTD., BALLABGARH

Present—

Shri S. R. Gupta, for the workman.

Dr. Anand Parkash/Shri Jagat Arora, for the management.

AWARD

By order No. ID/FD/75/46934, dated 27th October, 1977, the Governor of Haryana referred the following dispute between the management of M/s Goodyear India Ltd., Ballabgarh and its workmen Shri Chiman Ram, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Chiman Ram was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties, who appeared and filed their pleadings. On the pleadings of the parties the following preliminary issue was framed by my learned predecessor,—vide his order dated 31st August, 1978 :—

1. Whether the reference is barred by the rule of resjudicata ?

In the evidence the management placed on record certified copy of order of Labour Court, Rohtak, Ex. M-1. The workman took many opportunities for evidence but lastly requested that he wanted to challenge the order of the Labour Court, Rohtak, in the Supreme Court because he had lost the case in the High Court. Finally the parties addressed their arguments on the preliminary issue. I now give my finding on this issue.

Issue No. 1.—Dr. Anand Parkash, learned representative for the management, argued that the workman was not an employee of the management and this issue had been earlier decided between the parties by the Labour Court, Rohtak. This reference was, therefore, barred. He cited 1961 II LLJ Page 25, 1975 II LLJ Page 373 and 1975 I LLJ Page 71. On the other hand Shri S. R. Gupta, learned representative for the workman argued that the rule of res judicata was not applicable because the proceedings were different. He cited 1976 PLR Vol. 33 Page 118 and 213.

I have gone through Ex. M-1 and find that the order was passed in application number 178 of 1974 under section 33-C(2) of the Industrial Disputes Act between this workman and the management of M/s Good Year India Ltd., Ballabgarh. The following issue was framed for trial in that application.—

Whether the applicant is an employee of M/s Good Year India Ltd., Ballabgarh and can this question be gone into the present proceedings?

This issue was decided by the Court,—*vide* its order dated 24th May, 1978, against the applicant and held that he was not an employee of the management. I find that this order being between the same parties and matter of controversy also being the same is finally adjudication of the matter so far as above controversy was concerned. In the presence of that order this issue cannot be agitated afresh by the parties. It was stated at the bar that this order was challenged before the High Court in a writ petition which failed. Under the circumstances, I decide this issue in favour of the management and against the workman.

While answering the reference, I give my award that the workman is not entitled to any relief.

M. C. BHARDWAJ,

Dated the 25th November, 1981.

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 1068, dated 27th November, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Dated the 25th November, 1981.

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 9(1)81/Lab./14309.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Goodyear India Ltd., Ballabgarh.

BEFORE SHRI M.C. BHARDWAJ PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 318 of 1978

Between

SHRI MOHAMAD YUSUF, WORKMAN AND THE MANAGEMENT OF M/S GOOD YEAR INDIA LTD., BALLABGARH

Present.—

Shri S. R. Gupta, for the workman.

Shri O. P. Malhotra/Shri Sat Pal, for the management.

AWARD

By order No. ID/BLB/56-78/36472 dated 3rd August, 1978, the Governor of Haryana referred the following dispute between the management of M/s Good Year India Ltd., Ballabgarh and its workman Shri Mohamad Yusuf, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Mohamad Yusuf was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed by my predecessor on 17th February, 1979 :—

- (1) Whether the workman has left the services of the company of his own ?
- (2) Whether the reference does not fall within the purview of section 2(a) of the I.D. Act ?
- (3) Whether the dispute is an industrial dispute ?
- (4) Whether the termination of services of the workman was justified and in order ?
- (5) If not, to what relief is he entitled ?

The management examined Shri Shanker Nath Rai, leave clerk as MW-1 and Shri K.L. Khurana, Manager Labour, as MW-2. The workman examined Sh,ri Mohinder Singh, Ayurvedic Chikitsa Adhikari, Government Ayurvedic Dispensary, Malai, district Faridabad, as WW-1, Shri Om Parkash as WW-2 and himself as WW-3. Arguments were heard. I now give my finding issueswise :—

Issues No. 1 to 4.—These issues are mixed issues of law and facts and inter-related, therefore, taken together. MW-1 stated that he had brought leave register and Ex. M-1 was extract from the register for the year 1976. Extract from attendance register were Ex. M-2 to M-4. In the extracts L/O indicates Lay off, C.L. casual leave, C.A. casual leave not granted, S.L. sick leave granted, S.A. sick leave not granted, P. L. privilege/earned leave granted, P.A. privilege/earned leave not granted, SUSP. suspension, L. leave without pay, A in red absent, Off. weekly off, P.H. paid holiday. He further stated that leave application was to be submitted by a workman although sometimes it was received through a colleague or some source. Leave application was acknowledged and a receipt was issued for the same. Every leave application form was first submitted to him and he then forwarded to proper authority. When the form was received back with the remark of Section Incharge he made entry in the attendance register and leave register. In cross-examination he stated that he had not brought leave register for the years 1973 and 1974, therefore, he could not tell the days of absence and leave etc. for those years. He denied the suggestion that receipts were not issued for leave applications. There was no register maintained for recording receipt of medical certificates from the workmen. A receipt was issued in witness of the receipt of medical certificate. He could produce the record if in case receipt was issued in respect of Ex. M-6 to M-8. The witness further deposed that in the year 1974 the workman availed 7 sick leaves and one casual leave but further stated that these seven sick leaves were not granted. He could not tell through whom Ex. M-5 was received. He could not produce counterfoil of receipt Ex. M-5 to M-8. MW-2 stated that he was in the service of the company since April, 1974 and was conversant with the facts of the workman. The workman joined in December, 1973. The workman was confirmed in October, 1974. The attendance record of the workman was very poor. He used to be absent. The management had issued warning to him and he had given written undertaking in January, 1977, to improve his attendance. Ex. M-11/A was letter of warning and Ex. M-12 was undertaking of the workman. The workman gave medical certificate from 13-2-77 to 21-3-77. Ex. M-5 and Ex. M-13 to M-23 were photo copies of leave applications and medical certificates for the period 13-2-77 to 21-3-77. No leave application was received beyond that. He denied the suggestion that the management refused to receive application from the workman after 21-3-1977. Leave application was received by the leave clerk against a receipt. The management received letter dated 16-4-1977 copy Ex. M-24 from the workman. The workman did not sent any intimation nor he came for duty. A letter was written to him on 30-3-77 intimating him that he had abandoned his job as per Standing Orders clause 15-H. Copy of the letter was Ex. M-25. It was sent by registered A. D. post, postal receipt being Ex. M-26. Letter Ex. M-24 was replied by letter Ex. M-27 denying the allegations of the workman. It was also sent by registered A.D. post, postal receipt Ex. M-28. It was received back undelivered as refused. Ex. M-29 and M-30 were photo copies of the contents of the letter. Demand notice Ex. M-31 was then received from the workman. The management offered comments Ex. M-32. Ex. M-33 was a photo copy of the letter from the workman and Ex. M-34 reply to the Labour Commissioner.

Ex. M-36 was copy of Standing Orders. Ex. M-39 to Ex. M-66 were copies of leave applications and certificates submitted by the workman to the management. In cross examination, he stated that no chargesheet was issued before issuing letter Ex. M-11 A. The name of the workman was struck off on 30-3-77. He admitted it as correct that no letter was issued to the workman before striking off his name asking him reasons of his absence. He also admitted that no retrenchment compensation was offered for striking off his name as it was not a case of retrenchment. He further stated that no record was to show as to who brought application Ex. M-5 and M-13 to M-23. He denied the suggestion that the workman reported for duty on 13-4-77 and was not allowed by the security staff. He admitted as correct that no chargesheet was given to the workman for his being irregular. He denied the suggestion that medical certificates Ex. M-6 to M-8 were sent by the workman in due course of time but not recorded by the management.

WW-1 Incharge Government Ayurvedic Dispensary, Malai stated that he joined the dispensary in June 1980. During April, 1977 Shri Shri Dutt was the Vaid Incharge. He had brought OPD register which was available in the records and other records were not available as were destroyed after three years. In the register there was an entry at serial No. 6 for the treatment of Shri Mohamad Yusuf. His annual patient number was 1126 on 18-3-77. On 12-4-77 at serial number 12 with annual number 1560 also bears the name of Shri Mohamad Yusuf. There was no other entry between 18-3-77 and 12-4-77. He did not know Dr. Shri Dutt personally, nor worked with him, therefore, could not recognise his signatures on Ex. M-6 to M-8. He recognised rubber stamp affixed on these documents to be that of his dispensary. The forms bearing certificate Ex. M-6 to M-8 were not available in the dispensary now. In cross-examination he stated that he did not know the place of posting of Dr. Shri Dutt. WW-2 stated that he knew the concerned workman. He had brought the medical certificates of the concerned workman and delivered the same at the factory gate. No receipt was given to him. In cross-examination he stated that he did not remember the date or the month. He was illiterate. He denied the suggestion that he was deposing falsely. WW-3 the concerned workman stated that he joined the factory in 1973. He fell sick in the February, 1977 and treated first from MBBS doctor from Palwal but should not recovery. Then he treated himself from Government hospital. There also he did not recover then he remained under treatment of Government Ayurvedic Dispensary at Malai. He remained sick till April. He used to send medical certificates to the employer. After recovery he presented himself for duty but was not taken on job and was told that he had been fired. He did not received any termination letter and any other communication from the management. He was not paid any retrenchment compensation or any notice. Ex. W-1 was the copy of demand notice. In cross-examination he stated that he did not know the disease he was suffering from. He had fever and stomache. Fever rose upto 102. He sent certificate of the MBBS doctor till the period he was under his treatment. He also sent certificate of Malai Vaid. He did not send all the certificates through Shri Om Parkash WW-2. Some certificates were sent through one Shri Mohamad Yunus. He did not get any receipt for the certificate from the management. He denied the suggestion that he did not send medical certificate from 18-3-1977 to 15-4-1977.

Shri O. P. Malhotra learned representative for the management argued that the workman absented himself without any applications or intimation from 22-3-1977 to 30-3-77. He cited Ex. M-3 apology form the workman and argued that he was an habitual absentee. He read out clause No. XV-H of the Certified Standing Orders and argued that the name of the workman was struck off in accordance with the above clause. He also argued that Standing Orders had force of statue so far as the parties were concerned and the conditions of service were governed by the same. He also argued that the case of abandonment of service which was caused by the workman by remaining absent and as such it was not termination, therefore, section 2-A of the I.D. Act was not applicable. It was, therefore, not an Industrial Dispute. He also argued that it was not a case of retrenchment either which the workman was going to build. He cited 1967 II LLJ 883 and 1979 ILLN 610. On the other hand Shri S.R. Gupta learned representative for the workman drew my attention to the

pleadings and his application for amendment of claim statement given on the basis of the decision of the Hon'ble the Supreme Court in *Santosh Gupta versus State Bank of Patiala* and argued that on the facts of the case striking off the name amounted to retrenchment in view of 1978 I LLJ page 1. He also cited 1978 II LLJ page 379. It was also argued by him that chapter 5-A of the industrial dispute had over-riding affect over the standing orders. He pointed out that no enquiry or notice was given to the workman before striking off his name. He cited 1978 I LLJ page 460, 1970 I LLJ page 557, 1973 II LLN page 173. He also cited 1980 II LLJ page 72. According to the demand notice Ex. W-1 the workman was laid sick by typhoid and stomachache and he remained under treatment of various doctors. It was also written that his services were terminated in contravention of section 2 (00) and 25 (d) of the Industrial Disputes Act.

According to the management the workman was absent and action was taken as per the certified Standing Orders. The cause of action giving rise to the dispute arose by letter Ex. M-25 which was dated 30th March, 1977. The letter is as under :—

1. Article XV(H) of the Certified Standing Orders of the company enunciates:—

“Unexcused absence is defined as absence from work for which no prior approval has been given by the department Foreman or Superintendent to whom the employee is responsible. When an employee has unexcused absences to two (2) days within any two months period, he will be given a warning letter. When an employee has unexcused absences of seven (7) days in any six months period, he will be given a warning letter. When an employee has unexcused absences of four (4) or more days in a month or four (4) consecutive days or more he shall be subject to discharge and shall be deemed to have left the service without giving due notice to the management.”

2. On perusal of your attendance record, it has been observed that you have been absenting yourself from the duties with effect from 22nd January, 1977.

3. As such, under the aforesaid provisions of the certified Standing Orders of the Company, it is deemed by the management that you have left the services of the company without notice. Your name has, therefore, been struck off from the workers muster roll with effect from date.

4. You may collect your dues if any from the Factory pay roll department on any working day between 10.00 A.M. and 2.00 P.M. after submitting the usual clearance slip.

It is admitted fact that he was on sick leave for 7 days i.e. 15-3-1977 to 22-3-1977 for which leave application Ex. M-22 was received by the management alongwith medical certificate Ex. M-23 from Government Ayurvedic Dispensary. According to WW-1 his name appear in the dispensary register on 12th April, 1977 although there was no entry prior to it upto 18th March, 1977. A similar question was decided by the Supreme Court as reported in 1987 ILLJ page 1 and it was held that striking off the name of the workman from the rolls by the management is termination of the services. Such termination of service is retrenchment within the meaning of section 2 (00) of the Act. As regards the contention of the learned representation for the management that action was taken under the clause of the Standing Orders. I find that absence of 4 days as provided in the Standing Ordres to entail the consequences of losing job too harsh, because the period was very small. However, this contention has been negative by the Hon'ble the Superme Court in the above cited decision. Shri S.R. Gupta learned representative for the workman also cited case of 1979 I LLJ page 257 in which the Supreme Court held that abandonment by workman is always a question of fact. A voluntary abandonment of service was to be proved by facts of a particular case but the case in hand the management did not issue any letter to the workman after 30th March, 1977, i.e after expiry of his leave though it was well within the knowledge of the management that the workman was sick. This fact is admitted by MW-2 that no enquiry letter was issued to the workman to enquire about his further absence. As regards the contention that the present

case was not an Industrial Dispute, I think that after insertion of section 2-A in the Industrial Disputes Act the controversy has ended because where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute according to the section. It is evident from the facts that the workman was issued letter informing him about the striking off his name by the management, by which action he was not allowed to re-join his duties. This controversy is covered by section 2-A. Shri S.R. Gupta replied the contention of the management about the clause of the Standing Orders by reading section 25-J(1) of the Industrial Disputes Act which is as under :-

"The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946]. He argued that chapter 5-A dealing with retrenchment had overriding effect on the Standing Orders. The management must comply section 25-F while passing such order. He further cited Santosh Gupta *versus* State Bank of Patiala and argued that now the controversy about termination amounting to retrenchment has been set at rest by the Supreme Court in which 1978 ILLJ page 1 and 1976 ILLJ page 478 known as Sundramani's case has been reiterated. It is held as under :-

"If the definition of 'retrenchment' is looked at unaided and unhampered by precedent, one is at once struck by the remarkably wide language employed and particularly by the use of the words 'termination'... for any reason whatsoever." The definition expressly excludes termination of service as a "punishment inflicted by way of disciplinary action". The definition does not include so it expressly says, voluntary retirement of a workman or retrenchment of the workmen on reaching the age of superannuation or termination of the service of the workman on the ground of continuous ill health. Voluntary retirement of a workman or retrenchment of the workman on reaching the age of superannuation can hardly be described as termination by the employer of the service of a workman. Yet the Legislature took special care to mention that they were not included within the meaning of "termination by the employer of the service of a workman for any reason whatsoever." In the case in hand it is admitted by the management that no compensation was paid or offered to the workman while issuing him impugned letter and thus compliance of section 25 (F) was not made. This is not a case of disciplinary action either. Therefore, action is against the provisions of Section 25F of the Industrial Disputes Act and illegal. It is, therefore, held that the present dispute is an Industrial Dispute and the workman never intended to abandon his job. Therefore, all these issues are decided against the management.

Issue No. 5.—As I have held above that the action of the management was illegal, therefore, the natural consequence was that the workman was entitled to reinstatement with continuity of service and with full back wages.

While answering the reference, I give my award that the termination of services of the workman was neither justified, nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

Dated 24th November, 1981.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

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No. 1048, dated 25th November, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.